SBCivil Writ Petition No.1564/2006

M/s Bharat Fuels Jodhpur
v.
State of Rajasthan & Ors.

Date of Order :: 20th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.R.Beniwal, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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This petition for writ is directed to challenge validity and propriety of the order dated 28.2.2006 passed by learned Civil Judge (SD), Jodhpur in Original Suit No.37/05. By order impugned the court below while rejecting an application preferred by applicant Shri Mohanlal under Order 1 Rule 10 of Civil Procedure Code, 1908 stayed the proceedings in Suit No.37/05, M/s Bharat Fuels, Jodhpur v. State of Rajasthan & Ors. till the disposal of the Suit No.53/04, Mohanlal v. Bharat Petroleum Corporation Ltd. & Ors. The trial court by order impugned held that the subject matter of both the suits is substantially same, therefore, adjudication of both the suits independently shall create factual and legal problems.

While giving challenge to the order impugned it is contended by learned counsel for the petitioner that subject matter of the two issues is absolutely different and, therefore, the trial court erred while staying proceedings of the suit No.37/05, M/s Bharat Fuels Jodhpur v. State of Rajasthan & Ors. It is

pointed out by counsel for the petitioner that in the suit preferred by Shri Mohanlal before the court of learned Additional Civil Jude (JD) bearing No.53/04 a decree for permanent injunction is sought by the plaintiff restraining the defendants from installing a petrol pump on a plot owned by the plaintiff situated in north direction to the petrol pump operated by the plaintiff himself. A decree for permanent injunction is also sought by plaintiff Mohanlal in the aforesaid suit for restraining the defendants from installing and operating the petrol pump at the disputed site being a no objection certificate obtained in violation of law, whereas in the suit preferred by the plaintiff petitioner a decree is sought to declare the instructions given by the District Supply Officer for not issuing no objection certificate in favour of the plaintiff.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the issue in both the suits is materially and substantially same and identical, therefore, the trial court rightly applied the provisions of Section 10 CPC by staying proceedings in Suit No.37/05.

Heard counsel for the parties.

Copies of the plaint in both the suits referred above and also the copies of the written

statements are placed on record by the petitioner, from reading therefrom it reveals that a decree for permanent injunction is sought by plaintiff Mohanlal in Suit No.53/04 restraining Bharat Petroleum Corporation Ltd. to instal the petrol pump at the land owned by him. He has also claimed for a decree of permanent injunction restraining Bharat Petroleum Corporation from installing and operating a petrol pump from the site in dispute being in violation of the guidelines prescribed by the Ministry of Surface Transport and National High Way authorities.

On the contrary, in the suit preferred by the plaintiff petitioner a decree is sought to declare the instructions illegal given by the District Supply officer for not issuing no objection certificate in favour of the plaintiff petitioner for installation of petrol pump.

It is true that both the suits pertain to same site and the questions with regard to installation of petrol pump, however, the subject matter in issue in the subsequent suit is not substantially and directly same. In the subsequent suit there is no dispute wit regard to title of the land where petrol pump is required to be installed. The question in the subsequent suit is as to whether the District Supply Officer was right in issuing instructions for not giving no objection certificate

to the plaintiff with regard to installation and operation of the petrol pump. Some facts may be common in both the suits but the powers under Section 10 CPC to stay proceedings in subsequent suit can be exercised only if the matter in issue is directly and substantially involved in the previous suit.

In the instant matter the issues in both the suits are different and, therefore, the trial court erred while staying proceedings in the subsequent suit.

In view of whatever discussed above this petition for writ is allowed. The order impugned dated 28.2.2006 is quashed to the extent it stays proceedings of the Suit No.37/05 till disposal of the suit bearing No.53/04 pending before the court of Additional Civil Judge (JD), Jodhpur. The respondents are directed not to discontinue operation of petrol pump run by the petitioner till disposal of the application preferred by the petitioner plaintiff before the trial court under Order 39 Rules 1 and 2 CPC. It is expected from the trial court to decide the application within a period of three weeks from today.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.